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December 3, 2012

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VIA E-MAIL AND U.S. MAIL

Ms. Lucinda E. Jesson
Commissioner
Minnesota Department of Human Services
P.O. Box 64998
St. Paul, MN 55164-0998

Dear Commissioner Jesson:

I enclose with this letter the first report of the recommendations of the Sex Offender Civil Commitment Advisory Task Force. As the report indicates, we have been charged with examining and providing recommended legislative proposals on three areas of the Minnesota civil commitment system for sex offenders. This report addresses the issue of Less Restrictive Alternatives to commitment of sex offenders to secure treatment facilities.

The order of the federal court required this report to be submitted by December 3, 2012, which we now do. Our goal was to answer the specific immediate question posed to us, before proceeding with a broader inquiry.

The short timeline within which we were required to present our initial recommendations made it necessary for us to be very focused in our analysis and recommendations. This report explains our process, identifies the resources we examined, explains the reasoning behind our conclusions, and contains a list of specific recommendations for legislative action on the topic of Less Restrictive Alternatives. However, we realize that our work is not done.

To address the other two issues identified by the court, the Task Force will need to review the entire system of civil commitment of sex offenders from referral to commitment to release. We plan to conduct that review and analysis over the next twelve months. It is our plan to meet regularly and often in the early months of the coming year so that we may communicate with legislators and coordinate our efforts with legislative developments on the subject. Following the end of the legislative session, we will take stock of where things stand and meet on a regular basis through the following months to prepare our final recommendations. We expect that we will present that final report on or before December 1, 2013.

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The members of the Task Force recognize the seriousness of the assignment that they have undertaken and appreciate the trust and confidence that you and the court have shown in us.

Very truly yours,

Briggs and Morgan, PA

s/ Eric J. Magnuson
Eric J. Magnuson

EJM/kd
Enclosure

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November 29, 2012

MEMO

TO: Commissioner of Human Services

**FROM: The Hon. Eric J. Magnuson, Chair,
The Hon. James Rosenbaum, Vice Chair,
Sex Offender Civil Commitment Advisory Task Force**

SUBJECT: Less Restrictive Alternatives to Secure Facility Commitments

This Task Force has been charged with examining and providing recommended legislative proposals on the following three topics:

- A. The civil commitment and referral process for sex offenders;
- B. Sex offender civil commitment options that are less restrictive than placement in a secure treatment facility; and
- C. The standards and processes for the reduction in custody for civilly committed sex offenders.

Part of the Task Force's charge is to have recommendations on the second topic by December 3, 2012. To that end, the Task Force met on October 11, November 1, 15, and 29. Members have studied a large volume of resource materials throughout this time period. Meetings included presentations from practitioners and discussion among Task Force members. Members were invited to make submissions addressing the three topics, with emphasis on the Less Restrictive Alternatives topic.

A number of conclusions may be drawn from our preliminary examination of the issues presented:

- It is clear from the review by Task Force members of the resource materials and the discussions and submissions of the members that Less Restrictive Alternatives is not a simple problem. Serious constitutional issues are presented in the pending federal litigation which gave rise to the appointment of the Task Force. Not only is civil commitment complex legally and medically, but there is a great deal of overlap between addressing Less Restrictive Alternatives for those already civilly committed (the first task assigned to the Task Force by the federal court and Commissioner), and providing alternatives to those who are subject of pending but not completed or future petitions for commitment.

- It is also clear that considerable additional study and thought will be necessary to provide a comprehensive proposal that deals with these interrelated issues.
- Perhaps the most significant impediment to effective Less Restrictive Alternatives is the absence of facilities and funding for programs to which offenders can be committed short of a secure facility, or outright release.
 - Existing law allows a court to commit an individual to a less-restrictive alternative if the individual “establishes by clear and convincing evidence that a less restrictive treatment program is available that is consistent with the patient's treatment needs and the requirements of public safety.” Minn. Stat. § 253B.185, subd. 1(d) (2012). However, the lack of programs and facilities makes this provision of limited value.
 - The Legislative Auditor’s March 2011 report highlighted this issue in its findings and recommendations:
 - “Minnesota lacks reasonable alternatives to commitment at a high security facility.” (p. xi)
 - “One problem with Minnesota’s commitment process is that it results in an all-or- nothing outcome. The decision that prosecutors and judges face is that either a sex offender is civilly committed in an expensive, high security facility, or the offender is released to the community, sometimes with no supervision if he has served his complete prison sentence.” (p. 42)
 - “Minnesota may be committing some sex offenders who could be treated and supervised in other less costly settings.” (p. 43)
 - “Recommendation: The Legislature should require MSOP to develop a plan for alternative facilities for use by certain sex offenders currently at MSOP, as well as for certain newly committed individuals. The plan should provide details about funding and needed statutory changes to ensure adequate supervision, monitoring, and treatment of these sex offenders. The plan should also address the funding and statutory changes needed to address a stay of commitment option. The cost impact of these options should be compared with the costs of expected growth at MSOP without any change in policy. The plan should be presented to the 2012 Legislature.” (p. 45)

Recommendations

1. The Legislature must provide adequate funding for less secure residential facilities, group homes, outpatient facilities, and treatment programs. The Legislature must ensure that such facilities and programs are operational within a reasonable period of time.
2. The Department of Corrections, the Department of Human Services, prosecutors, the courts, and persons subject to the commitment process must have full ability to access these Less Restrictive Alternatives. To the extent that any of the current statutory or regulatory laws are obstacles to Less Restrictive Alternatives, appropriate legislative changes should be made.
3. Less Restrictive Alternatives must ensure public safety. The Legislature should provide for increased resources for public education regarding the rehabilitative aspects of such programs and the provisions for public safety.
4. The Legislature should provide for geographic distribution of Less Restrictive Alternative facilities and programs to serve the entire state through regional, multi-provider and other collaborative programs. The Legislature must consider how local government ordinances, resolutions, or similar laws which have the effect of limiting, excluding, or impeding the siting of Less Restrictive Alternative facilities or programs for civilly committed sex offenders should be dealt with when they conflict with the establishment of a statewide plan for Less Restrictive Alternatives.
5. To effectuate these efforts, the Task Force urges the Legislature to adopt legislation providing that:
 - a. The Commissioner of Human Services shall request proposals from governmental and non-governmental entities and organizations for the development of new programs or enhancement of existing programs to provide safe options for the housing, supervision, and treatment of civilly committed sex offenders outside of a secure treatment facility.
 - b. Proposals shall at a minimum be required to describe the provision of residential services, treatment services, supervision services, use of monitoring technology such as GPS, and transitional services such as employment counseling and training in daily living skills.
 - c. Provision of these services need not be done solely within a residential facility so long as the proposal addresses the need for public safety in all aspects of programming.
 - d. Proposals must also include a plan for transitional progression into other lesser-restrictive settings and conditions.

- e. Proposals may include regional, multi-county or multi-provider programs and facilities.
- f. Proposed programs may be designed to serve individuals who previously have been civilly committed to secure facilities, and those who are subsequently civilly committed.
- g. The Commissioner of Human Services may award planning funds as necessary to further the development of proposals for less-restrictive alternatives.
- h. The Commissioner may request proposals on an ongoing basis.
- i. The Commissioner shall enter into contracts with governmental and non-governmental entities and organizations agreeing to provide housing, supervision, and treatment of civilly committed sex offenders outside of secure treatment facilities.
- j. If the Commissioner determines that there is insufficient capacity or geographic distribution from those awarded contracts under this section, the Commissioner shall establish state-operated facilities and programs in such amount as to provide sufficient capacity and geographic distribution.
- k. The Commissioner shall develop Less Restrictive Alternative programs and facilities throughout the state after due consideration of the population of offenders to be served, the number of facilities and different programs necessary to serve that population, the expressed desire of the Legislature that facilities not be unduly concentrated, and the financial impact of programs and facilities providing overlapping services.
- l. The Commissioner shall supervise, coordinate, and administer the development of less-restrictive alternative facilities and programs.
- m. Certification and licensing of programs and facilities granted by either the Department of Human Services or the Department of Corrections shall be honored by both departments.
- n. The Commissioner of Human Services shall perform case management and supervision activities for those civilly committed to a Less Restrictive Alternative and should have supervisory authority whenever the Commissioner is not directly providing those services.